Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Game Show Network, LLC,	)	MB Docket No. 12-122
Complainant,	)	File No. CSR-8529-P
	)	
v.	)	
	)	
Cablevision Systems Corp.,	)	
Defendant	)	

DIRECT TESTIMONY OF THOMAS MONTEMAGNO

I, Thomas Montemagno, hereby swear and affirm as follows:

I. Background

A. Responsibilities

1. I am the Executive Vice President of Programming for Cablevision, a position I have held since October 2012. I report to Cablevision's CEO, James Dolan. I joined Cablevision more than 23 years ago after graduating from St. John's University, and have held a variety of positions within the company's programming department. Prior to becoming Executive Vice President, I was Senior Vice President of Programming Acquisition. The programming department handles acquisition of all of the content that Cablevision carries on its systems—broadcast, linear, video-on-demand, and the like. As Senior Vice President, I led these acquisition efforts, and I made recommendations for carriage and non-carriage of cable programming services.

2. In my current position, I have primary negotiating and decision-making authority for all of the content Cablevision carries on its systems. In making carriage decisions, I seek input from the video product management group. The video product management group is

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responsible for putting together the packages of channels, movies, and other content that are available for customers to purchase.

3. I determine whether Cablevision will carry particular programming in collaboration with the video product management team, and, on occasion, subject to the approval of Mr. Dolan. Before this year, I made these decisions in conjunction with the prior Executive Vice President of Programming, Mac Budill, and subject to the approval of Cablevision's now former President of Cable and Communications John Bickham and COO Tom Rutledge. My job requires me to know what programming is available, and make informed, editorial judgments about which programming networks will add the most value for Cablevision's customers. We strive for delivery of a channel lineup that delivers maximum value to our current and prospective customers. In making carriage decisions, we balance the need to acquire the most compelling content with the need to make our services available at the lowest possible cost to our customers.

B. Cablevision's Approach to Carriage Agreements

4. When considering programming networks for carriage on Cablevision, we evaluate what content makes sense for our company and our subscribers. A programming network can add value to our channel lineups in several ways. It might be a popular network that customers expect to have access to or it might fill a niche need within our channel lineup. A programming network can also provide competitive differentiation. For example, we are currently trying to distinguish ourselves in the marketplace by expanding our foreign language offerings. A programming network can also be valuable if it responds to a specific customer demand. For instance, we added the [redacted], following years of customer requests.

5. I regularly receive unsolicited pitches from programming networks hoping to gain carriage on Cablevision's cable television systems. We turn down the overwhelming majority of such networks, including programming networks that would be free to Cablevision for a variety of reasons, including bandwidth constraints. It is my job, with input from others, to determine which of the many existing and new programming networks entering the market at any given time would be the best fit for the packages of programming Cablevision offers to its subscribers.

6. When negotiating a carriage agreement with a programming network it is always my goal to get the best deal possible for our company and our customers. That another MVPD carries a programming network does not necessarily mean that Cablevision will reach the same conclusion about that programming network's value. Similarly, when we enter into carriage agreements with programming networks, we negotiate the terms that reflect how we value the service. While I am mindful of whether and how other MVPDs carry a particular service, as it is useful information about how the marketplace values that service, Cablevision ultimately makes an independent business judgment about the value of a programming network to Cablevision's subscribers.

7. Although all provisions in a carriage agreement are carefully negotiated, there are a few that are especially important. For instance, the per subscriber license fee is always a central focus of negotiations. Relatedly, there is typically a vigorous negotiation as to whether to include a most favored nations ("MFN") provision. MFN provisions vary in structure, but generally give an MVPD matching rights to key terms of a programming network's contracts with other MVPDs—such as rates. Some MFNs are against all MVPDs and others

apply only to MVPDs above a certain size threshold, measured in number of subscribers; both types are common.

8. Another important term is the description of the programming offered by the network, typically called the "service description." Absent clear termination rights, Cablevision seeks to have clear and precise service descriptions in its carriage agreements, as we want to ensure that we receive the programming for which we are paying. Although programming networks may of course add and cancel individual shows, a substantial change in programming—such as a shift from one genre to another—that is inconsistent with the service description could lead us to terminate a carriage agreement.

II. Historical Relationship between Cablevision and GSN

A. Cablevision and GSN Entered Into a Carriage Agreement on Terms Highly Favorable to Cablevision.

9. Cablevision's history with GSN goes back to [redacted]. I participated in a number of meetings with GSN at that time, along with other Cablevision programming executives. The initial view of Cablevision's programming department was that GSN's programming, which consisted primarily of rerun game shows, did not add significant value to Cablevision's existing channel lineup and we were reluctant to offer carriage to the network.

10. At the time, GSN was owned entirely by Sony Pictures Entertainment, Inc. ("Sony Pictures"). Sony Pictures is the American television and film production and distribution unit of the Japanese technology and media giant Sony Corporation. Sony Pictures is a major player in the American television industry, and is an important provider of video-on-demand content to Cablevision.

11. In [redacted], after many months of negotiation, Cablevision and GSN executed a carriage agreement [redacted], a copy of which is

provided as CV Exh. 4. [redacted]

12. [redacted]

13. [redacted]

14. [redacted]

15. Cablevision would not have agreed to carry GSN without the [redacted] it received. During this time period, Cablevision consistently sought [redacted] from programming networks (and was often successful in obtaining it), particularly when negotiating with new networks.

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1 [redacted]

B. Cablevision and GSN Agreed to Extend the Term of the 1997 Carriage Agreement

16. The [redacted] provided Cablevision with an option to extend the agreement [redacted]. Prior to the expiration of the original term of the [redacted], Cablevision exercised this option. On [redacted], Cablevision and GSN [redacted], this time through [redacted] Under the [redacted] agreement, Cablevision agreed to [redacted] (Cablevision was generally trying to create marketing efficiencies), but [redacted]. Cablevision decided to continue carrying GSN principally to avoid making changes to the lineup, which is always disruptive to customers. We were also cognizant that [redacted] if we did not renew.

III. Cablevision and GSN Repeatedly Attempted to Negotiate a New Carriage Agreement But Could Not Agree on Terms.

A. Negotiations between Cablevision and GSN from 2005 to 2008

17. The [redacted] expired on [redacted]. The parties nonetheless continued to perform their contractual obligations pending further negotiations between the parties about a possible extension.

18. In [redacted], Mr. Budill, the senior Cablevision programming executive at the time, and I met with representatives from GSN, including then-CEO Rich Cronin, to discuss a new carriage agreement. In further meetings and phone calls over the next couple of months, [redacted]

[redacted]

19. Moreover, [redacted]. That was not acceptable to Cablevision. Although Cablevision had, at the time, approximately 2.8 million subscribers, a fraction of the number of the largest MVPDs such as DIRECTV and Comcast, [redacted]

20. In [redacted] GSN rejected this offer.

21. I understand that GSN alleges that this offer was not made in good faith [redacted]. That is incorrect. Although I suspected that Cablevision's offer [redacted], I also believed it was fair and consistent with other deals that Cablevision concluded with similarly valued programming networks. Between [redacted].

22. GSN rejected our proposal, [redacted]. As a comparison that I prepared at the time, CV Exh. 19, shows, the parties remained at loggerheads on a few key terms. We had additional meetings in [redacted], but the parties remained unable to agree on terms for a new carriage agreement.

23. In [redacted], Cablevision digitized GSN (that is, eliminated the duplicate analog feed and made it available exclusively in a digital format to all Cablevision subscribers that had a digital set-top box), along with a number of other networks. [redacted] GSN complained in a cursory way, but continued to provide its programming to Cablevision. [redacted]

24. In 2007, GSN hired both a new CEO, David Goldhill, and a new Senior Vice President of Distribution, Dennis Gillespie. I understand that GSN has alleged in this case that Cablevision declined meetings after David Goldhill became CEO. This is simply not true. We made every effort to meet with GSN in each instance a meeting was requested.

25. Mr. Gillespie reached out to me regarding a new carriage agreement in [redacted]. In response, I relayed the Cablevision proposal from [redacted]. I also told Mr. Gillespie that we would be willing to compromise [redacted]. A copy of my email exchange with Mr. Gillespie is CV Exh. 33. GSN rejected this offer. Mr. Gillespie and I had additional

[redacted], but we remained unable to agree on terms for a new carriage agreement.

B. In 2009 and 2010, Cable Providers, Including Cablevision, Faced Challenging Competitive Conditions.

26. In 2009 and 2010, Cablevision, like all cable operators, faced new and changing competitive conditions that put pressure on its programming budget. Those included: 1) demands by programming networks, particularly providers of sports programming, for higher license fees for carriage; 2) the "bundling" of programming networks in circumstances in which the same company owns multiple cable networks; 3) the linking of cable networks with broadcast stations in connection with the negotiation of retransmission consent agreements, which force us to carry such programming networks in order to carry the affiliated broadcast station; 4) significant increases in retransmission fees associated with carriage of broadcast stations; and 5) intense competition from MVPDs overbuilding our systems, including telcos.

27. Programmers, especially those with a great deal of leverage, such as the broadcast stations and networks with sports programming, have been aggressively raising their rates in recent years, which limits Cablevision's budget for other, less crucial programming. In the last few years, faced with the prospect of losing commercially critical programming, we have signed deals involving significant fee increases with [redacted].

28. Moreover, programming networks have become increasingly concentrated in large media conglomerates, such as Viacom, ABC-Disney, News Corp, and NBCUniversal. Programmers now "bundle" their services to require distributors to purchase them all, rather than choosing, and negotiating for, the services they believe have the most value for their customers. Paying for these bundled networks has put significant strain on our programming budget. [redacted]

[redacted]

29. The retransmission fees associated with carriage of broadcast stations have grown considerably in recent years, and are also a significant and growing burden on our programming budget. Historically, many local broadcast affiliates of broadcast networks were net free to Cablevision. In recent years, those affiliates have sought to be paid for their programming.

30. Because the lion's share of our subscribers expect to find the major broadcast networks on our system, we have been forced to negotiate retransmission consent agreements when our contracts expire in order to gain the right to carry those stations. For example, [redacted]. When Fox's contract expired in late 2010, however, Fox demanded [redacted]. Cablevision took a tough stance in negotiations with Fox over the fee increases, but after Fox pulled its programming causing Cablevision customers to miss multiple new episodes of FOX network programming, several weeks of the NFL season, the entire National League Championship Series, and two games of the World Series, we were forced into a substantial fee increase because this programming is critical to our subscribers. We believe we have a duty to our customers to maintain a stable cost structure and a disciplined approach to managing our costs is extremely difficult in light of these ever-increasing retransmission fees. We have looked

for ways to trim our programming budget in anticipation of future retransmission consent deals, as these have become the norm throughout the industry.

31. In this time period, we faced intense competition from the satellite and telco MVPDs in our geographic footprint, which put significant downward pressure on customer rates. At the end of 2009, DIRECTV and DISH Network together had 32.5 million subscribers. Today, they serve 34 million subscribers and are the second and third largest MVPDs in the country, respectively. Similarly, at the end of 2009, the telcos together had 4.8 subscribers, whereas today they serve more than 8.6 million households and are the sixth and seventh largest MVPDs, respectively. Cablevision competes with DIRECTV and DISH in its entire geographic footprint, Verizon FIOS in most of it, and AT&T U-verse in parts of Connecticut. While satellite and telco providers are *gaining* subscribers, cable providers, including Cablevision, are *losing* subscribers, and being forced to lower their promotional pricing to compete. In this competitive environment, it is extremely difficult to raise our prices to offset the growing programming costs we face.

32. Finally, we face growing competition from video program providers which supply video content directly over the Internet. Viewers can obtain a great deal of video content over the Internet, either directly from broadcast and cable networks or through aggregators of video content, such as Netflix, Hulu, or Apple TV at nominal subscription costs. Making matters worse, theft of content from these services is prevalent, which further undermines the pricing of our video services.

33. With expenses growing faster than revenues, and given the competitive landscape, Cablevision, like other MVPDs, has focused resources on controlling costs wherever we can. We make every effort to resist or limit rate increases when deals expire and to

renegotiate existing deals when we have the leverage to do so. This is part of our intense effort to offer subscribers higher value programming at the lowest possible price.

C. Despite this Changing Landscape, GSN Continued to Press for Terms that Cablevision did not Believe Reflected GSN's Value.

34. In [redacted], GSN again began pressing Cablevision to negotiate a new carriage agreement, asking for higher license fees, with annual increases and without marketing offsets. We did not believe that GSN was contributing value to our programming lineup commensurate with the fees we were paying, and Cablevision was certainly not prepared to pay any increase in those fees.

35. At a [redacted], I told Mr. Gillespie, that considering the economic climate and Cablevision's continuing goal of keeping programming costs contained, seeking higher license fees would potentially highlight GSN as a target for removal from the channel lineup. A copy of my notes from the meeting is CV Exh. 54. I understand that GSN claims that I "threatened" them not to ask for increases in license fees; in reality, however, I provided Mr. Gillespie with accurate information about our business constraints. I did not believe GSN was worth the [redacted] When I explained these circumstances to Mr. Gillespie, he dropped his request for higher fees. [redacted]

36. I understand that GSN asserts in this litigation that it was significantly disadvantaged by the lack of a new formal agreement with Cablevision, which GSN suggests was unusual. There are, however, numerous other networks whose carriage contracts expired and yet Cablevision continued to carry those networks under the terms of the carriage contracts, including license fee rate. For instance, in the same time period that Cablevision carried GSN without a formally renewed contract, it also carried [redacted] in the same fashion. [redacted] This practice is not uncommon in the industry more generally.

D. GSN Has Always Held Itself Out to Cablevision as a Game Show Network, and Not as a Women's Network.

37. I understand that, in this dispute, GSN is claiming that it is a women's programming network. I have never viewed GSN as such. I cannot recall a single meeting with GSN or a single presentation by the network in which it touted itself as a women's network. To the contrary, GSN has portrayed itself as universally appealing and uniquely focused on games. [redacted]" [redacted] Furthermore, over the years GSN pitched programming initiatives specifically targeted at bringing in a male audience, such as shows featuring poker tournaments and dodge ball competitions. Additionally, in the [redacted] meeting discussed above, GSN gave a presentation describing GSN as [redacted] A copy of this presentation is CV Exh. 52. These proposals and presentation were consistent with my understanding of GSN.

IV. Decision to Reposition GSN

A. Competitive Pressures Continued to Intensify for Cable Providers in 2010.

38. As noted above, Cablevision has come under increasing pressure to limit increases in programming costs.

39. In 2010, as a result of these trends, Cablevision was drawn into a series of public battles with programmers whose contracts were expiring over fee increases we felt were excessive, and did not want to pass on to customers. We fought tooth and nail over every penny, and I believe our willingness to "go dark"—a considerable inconvenience for our subscribers—over these cost increases demonstrates that we viewed it as essential to minimize cost increases. In the end, when faced with the prospect of losing valuable content on a permanent basis, we agreed to pay higher fees. These increases put even more pressure on our programming budget.

40. For example, in January 2010, Cablevision initially refused to pay the increased subscriber fees that Scripps Network Interactive ("Scripps") was seeking for HGTV and the Food Network, and Scripps deauthorized Cablevision's carriage of the networks for three weeks. In March 2010, ABC-Disney pulled its local broadcast affiliate, WABC, when Cablevision refused to pay increased fees that network. ABC timed the blackout to coincide with the Oscars, and it ended just as the Oscars were beginning, which was a significant inconvenience for Cablevision customers. Finally, as noted briefly above, Fox pulled its broadcast station and certain affiliated networks when Cablevision refused to pay unprecedented fee increases for a new carriage agreement in October 2010, causing Cablevision customers to miss NFL games, as well as most of post-season professional baseball aired on Fox. Ultimately, though we were able to get Scripps, ABC-Disney, and Fox down from their initial asks, we were forced to pay higher fees because their broadcast and sports network programming is critical to our customers.

41. These episodes underscore the difficult programming cost situation we were facing in 2010. It was in this context that we evaluated GSN and other networks with expired or expiring contracts.

B. Second Quarter Forecast

42. In July 2010, as we reforecasted our budget for the remainder of the year, we began to look at programming networks with expired contracts, or contracts that would be expiring at year-end, for potential removal from the expanded basic tier. As part of that process, [redacted] to give consideration to dropping GSN, which we were then carrying on our broadly distributed expanded basic tier. A copy of an email reflecting [redacted] request is CV Exh. 117.

43. [redacted] I viewed this description as consistent with various presentations made by GSN over the years.

44. [redacted]

[redacted] Nonetheless, I viewed GSN's performance as quite poor.

45. [redacted] I did not consider GSN then, nor do I understand GSN now, to be an independent network. [redacted]

46. [redacted]

[redacted]

C. Annual Budget Review

47. In [redacted], as part of our annual program budgeting process, the programming department undertook its ordinary course evaluation of programming cost savings opportunities on Cablevision's channel lineups. As part of that annual evaluation, we consider the costs of programming networks carried, what license fees increases are expected or are being proposed, which programming networks have contract provisions allowing us to reposition them and/or are out of contract, which programming networks are being watched by our subscribers, and which networks appear to help attract and retain diverse subscribers.

48. As part of this evaluation, we revisited GSN as a candidate for removal from the expanded basic tier. GSN was an attractive network for repositioning because: 1) its expired carriage agreement allowed repositioning; and 2) our audience measurement data showed that GSN had extremely low viewership by Cablevision subscribers among programming networks on the expanded basic tier.

49. When we consider repositioning programming networks to save costs, we only look at networks that are out of contract, or networks that have agreements that grant us carriage flexibility. For instance, [redacted]. In the absence of a contract, it is our view that an MVPD may place a programming network on any tier it sees fit, and a programming network implicitly agrees to that placement with the continued authorization of its signal.

50. Additionally, as noted above, even when the [redacted] was in effect, Cablevision had [redacted]

[redacted]. The contract explicitly provided that [redacted].

51. In viewership, [redacted]. (*See* CV Exh. 154 (November 2010 Set-Top Box Data and Nielsen Report).) In addition, GSN marketed itself as a general entertainment network, offering nothing unusual to attract any particular segment of viewers. Although the total hours of viewing data showed that [redacted], we still believed that the license fees Cablevision paid to GSN exceeded the value of GSN's programming.

52. We also felt GSN was a good candidate for removal from the expanded basic tier due to relatively low subscriber interest in the channel, which had been made evident when we had previously digitized GSN. In [redacted], when we began to carry GSN only in digital format, we had received a minimal number of complaints from subscribers. Therefore, we felt confident that customers would not disconnect if we dropped GSN.

53. [redacted] [redacted]

54. [redacted] [redacted]

[redacted]

55. [redacted]

56. At the direction of Mr. Rutledge and Mr. Bickham, we proceeded with our plans to reposition GSN to the Sports Pak and began bill messaging for the re-tiering in early December. This is reflected in the November 2010 programming report, which is included in CV Exh. 121. The Sports Pak was the best alternative to dropping GSN altogether as repositioning GSN to iO Silver or iO Gold would not have met our goals for cost savings (and the only other tiers we offer are language based). Additionally, since we didn't have any other subject matter oriented tiers, Cablevision was considering expanding the Sports Pak to include additional entertainment and lifestyle channels during this time period. [redacted]

D. The Decision to Re-Tier GSN Was not Related at All Related to WE tv or Wedding Central.

57. I understand that GSN's central allegation in this case is that Cablevision repositioned GSN to favor its affiliated networks WE tv, and Wedding Central. GSN is wrong. I personally participated in the decision-making process, and at no time in any of our deliberations did I or anyone else consider WE tv or Wedding Central, or any potential effect—competitive or otherwise—those networks might experience from the repositioning of GSN. Moreover, I never

consulted with anyone at then Rainbow Media Holdings, LLC ("Rainbow")[2] about GSN during the decision-making process. Cablevision's decision to re-tier GSN was purely driven by our evaluation of the cost of GSN relative to what we perceived as its limited value to our subscribers; we were concerned with creating a channel lineup with maximum value for our customers that we could offer at the most competitive prices possible.

58. Moreover, the claim that we took any action to protect WE tv and Wedding Central is inconsistent with [redacted]. In the last few years, we also launched the [redacted], which is also a women's network. In both instances, we decided to launch these programming networks purely for the purpose of creating value for our customers, and did not consider any potential impact on WE tv or Wedding Central.

E. Cablevision Does Not Calculate or Consider Price Per Rating Point.

59. I understand that GSN asserts that it has a better price per rating point (calculated on national Nielsen ratings) than WE tv, and therefore Cablevision could not have been commercially justified in re-tiering GSN. Cablevision, however, does not compute this metric, let alone use it to make programming decisions or to compare the value of programming networks to the channel lineup.

60. In addition, as discussed above, when we look at viewership information in connection with valuing a network for carriage purposes, we rely predominantly on our set-top box viewership data, which gives us tuning data for our customers. We also occasionally consult

[2] In July 2011, Cablevision spun Rainbow off as the publicly traded AMC Networks. Today, AMC Networks owns the cable channels AMC, IFC, WE tv, and Sundance Channel. Wedding Central, formerly a Rainbow network, was shut down immediately prior to the spin-off.

Nielsen data for the New York DMA. Cablevision rarely uses national ratings to make program carriage decisions because Cablevision, which is the most concentrated multiple-system owner ("MSO") in the nation, serves a subscriber base located virtually exclusively in the New York tri-state area (i.e., New York, New Jersey, and Connecticut). The ratings for our geographic footprint, therefore, are far more informative regarding the viewing habits of our own subscribers, than national ratings data.

F. Cablevision Notifies GSN of the Decision to Re-Tier

61. On December 3, 2010, I called Dennis Gillespie, GSN's senior distribution executive, to inform him of our decision to reposition GSN. He asked me to reconsider our decision, saying that GSN had new ideas for reinvigorating its image, but I told him the decision was final. He indicated that he understood the connection between the increasing retransmission fees in the industry and our need to trim programming costs, including GSN's fees. (*See* CV Exh. 146 (December 3, 2010 Email from Thomas Montemagno); *see also* CV Exh. 147 (December 3, 2010 Montemagno Hand-Written Notes).)

V. Appeals by DIRECTV and Sony

62. I now know that subsequent to my conversation with Mr. Gillespie, Derek Chang, then head of programming acquisition for DIRECTV, reached out to Mr. Rutledge in an attempt to open a broader conversation between DIRECTV and Cablevision and to seek reversal of the GSN repositioning. (*See* CV Exh. 150 (Email from Mac Budill to Thomas Rutledge et al.).) I came to learn that Josh Sapan, President of Rainbow (now CEO of AMC Networks), and Bob Broussard, President of Distribution for Rainbow (now President of Distribution for AMC Networks) had discussions with Mr. Chang thereafter about DIRECTV's willingness to carry Wedding Central. This was the first time there was any discussion involving GSN and a Rainbow network. As I previously noted, the possibility of DIRECTV carriage of Wedding

Central did not play any role whatsoever in Cablevision's decision to re-tier GSN. I understand that DIRECTV ultimately declined to carry Wedding Central.

63. On February 1, 2011, GSN became available to Cablevision subscribers only on the iO Sports & Entertainment Pak (we renamed the Sports Pak the Sports & Entertainment Pak a few days after migrating GSN to that tier), a package that contains other channels that feature games and competitions. Following GSN's repositioning in February, I understand that senior executives from Sony, GSN's other owner, reached out to Mr. Dolan in an effort to open broader negotiations involving GSN carriage.

64. I attended a meeting [redacted] at our offices. Mr. Dolan, Mr. Rutledge and I represented Cablevision. Rob Wiesenthal and Andy Kaplan of Sony attended, as did David Goldhill, CEO of GSN. At the meeting, we discussed a [redacted].

65. On [redacted]. Mr. Rutledge expressed the view that [redacted]. Though we [redacted]. Mr. Rutledge felt we should [redacted].

66. Throughout the rest of [redacted], I continued to participate in negotiations [redacted] to attempt to find ways in which Cablevision could

carry GSN in the expanded basic tier [redacted]. We could not reach an agreement on mutually satisfactory terms. (*See* CV Exh. 167 (2011 Programming Reports).)

A. Market and Customer Reaction to Re-Tiering of GSN

67. In my experience, the reaction of competing MVPDs to Cablevision's channel lineup can be an important indicator of how subscribers value different programming networks. In the past, when we have dropped or lost carriage of certain networks, our competitors have trumpeted that in an effort to persuade our customers to switch or induce prospective customers to sign up with them rather than Cablevision. For instance, during the inaugural season of YES Network ("YES"), Cablevision and YES were unable to come to carriage terms. Cablevision therefore did not carry most of the New York Yankee games that season. DIRECTV launched an aggressive campaign to woo Cablevision subscribers, indicating that DIRECTV viewed YES as a "must have" programming network, the lack of which might cause subscribers to switch MVPDs. For example, one DIRECTV print advertisement said, "YANKEE FANS: CABLEVISION STILL NOT OFFERING THE YES NETWORK? Get it from DIRECTV."

68. Verizon similarly stepped up its marketing to Cablevision subscribers during the Fox and ABC disputes, going so far as to offer a $75 discount during the ABC outage on a time-limited basis. The Verizon ad, which ran in newspapers, online, and on local TV said, "Catch all your favorite shows on WABC7 with Verizon FiOS. Can't imagine a week without 'Lost'? Get Verizon FiOS today and never miss an episode!"

69. None of our competitors launched a campaign of any kind when we repositioned GSN. We did, however, receive a sizable number of customer complaints immediately after the re-tiering. This was not entirely surprising because retirees, who in my

understanding make up a significant portion of GSN viewers, have a higher propensity to call and express dissatisfaction with video programming changes. Moreover, the customer calls dropped off steeply after just a few days.

70. [redacted]

These numbers strongly suggest that the action we took with respect to GSN made sense from a business standpoint.

VI. WE tv

A. Cablevision Has Always Conducted Arms-Length Negotiations with WE tv and Had Market Rates.

71. I understand that GSN alleges that Cablevision carries WE tv more broadly than GSN because of Cablevision's historic affiliation relationship with WE tv; this is wrong. We carry WE tv on the expanded basic tier because it is popular among our subscribers, consistently ranking in the top half of expanded basic tier networks, [redacted]. We do not, however, uniformly carry the former Rainbow networks on the expanded basic tier—both IFC and the Sundance Channel are on less penetrated tiers.

72. Moreover, I have been personally involved in all of the contract negotiations between Cablevision and WE tv since the inception of WE tv as Romance Classics

in 1997. We entered into agreements in [redacted], and every contract negotiation has been vigorous, with each side attempting to get the best deal it could for itself. (*See* CV Exh. 7 (Affiliation Agreements Between Women's Entertainment LLC and Cablevision).) In each instance, I believe we secured license fees consistent with market rates, which were a good value to Cablevision.

73. Most recently, [redacted]. I was the primary negotiator for Cablevision, and Bob Broussard was the point person for WE tv. We had extensive negotiations, and I believe the resulting deal represented a good value for Cablevision, including market rate subscriber fees. [redacted]

B. Channel Placement

74. It is conventional wisdom in the industry that channel placement can impact the performance of a programming network. As a result, channel placement is sometimes the subject of carriage agreement negotiations. I understand that GSN has alleged that Cablevision gave WE tv and/or Wedding Central special treatment with respect to channel placement. This is incorrect. Cablevision positioned WE tv where we thought it belonged—in the neighborhood (that is adjacent or proximate to) of other women's networks. When Wedding

Central launched, we put it on an available channel we had high up on the dial (channel 177) because it was a new network.

VII. Wedding Central

A. Cablevision Launched Wedding Central on Market Terms Following Arms-Length Negotiations.

75. I recall that in 2009 Kim Martin approached Cablevision with the concept for Wedding Central, seeking our input as to whether it would be attractive to distributors. She explained that WE tv's wedding programming had been very successful, and she thought there was an unmet need in the marketplace for a channel devoted exclusively to wedding programming and geared towards young women. She also thought the channel would be attractive to advertisers as weddings are a very lucrative industry.

76. Ms. Martin was successful in getting senior management at Cablevision to support the launch of Wedding Central, and she sought distribution from Cablevision.

77. Cablevision launched Wedding Central in [redacted]. Cablevision secured carriage [redacted] and we were the first distributor to launch Wedding Central, which we believed was a competitive advantage. Ultimately, I endorsed Wedding Central distribution on the digital basic tier for two basic reasons: 1) Wedding Central [redacted]; and 2) Wedding Central, as a spin-off from the successful wedding-themed block of programming on WE tv, represented an extension of an established programming franchise.

78. [redacted]

79. I understand that GSN has suggested that [redacted], or done because Wedding Central was owned by an affiliate. That is wrong. [redacted]

80. I understand that GSN has suggested that [redacted] is evidence that the network received special treatment. It is not the case, however, that the [redacted] that somehow gave Wedding Central an advantage over other networks. Moreover, [redacted]. For instance, when we were negotiating with [redacted] to discuss the deal. Cable industry executives leverage the relationships they have in order to get deals done; that is the nature of the business.

81. Wedding Central performed well on Cablevision, and in [redacted] we negotiated a new carriage agreement. I understand that ultimately Wedding Central was nonetheless unable to get broad distribution and senior management decided to shutter the network in the summer of 2011.

82. Although GSN has apparently argued that Cablevision's concern about the cost of carrying GSN is contradicted by its continued investment in Wedding Central. But those

two decisions were wholly unrelated. Business decisions concerning carriage agreements with programming networks are made by Cablevision's programming acquisition and product management teams. Decisions about network development, on the other hand, were made by the lines of business—in this case, Rainbow—which were responsible for such networks. During the period that Rainbow was a subsidiary of Cablevision, Cablevision's decision-making and budget were completely unrelated to, and were not affected in any way by, decisions by Rainbow Networks' network development team about how to spend their separate and independent programming budget. Cablevision's decision to remove GSN from the expanded basic tier following its distribution team's evaluation of programming cost savings opportunities had absolutely nothing to with a decision reached by the independently operating Rainbow Networks team to invest in a particular network. This analysis is of course also true as of the date that AMC Networks became a separate company.

VIII. Negotiations with Other Vertically Integrated MVPDs

83. I understand that GSN has pointed to [redacted]. This is wrong. [redacted]

84. Cablevision's decision to re-tier GSN was based purely on our analysis of GSN's value. Cablevision never gave any consideration at all to WE tv or Wedding Central in

the course of evaluating and ultimately re-tiering GSN. Nor, at the time of the decision to re-tier GSN, did we contemplate the possibility of a broader deal with GSN's owners.

Dated: March 11, 2013
New York, New York

Thomas Montemagno